

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

**18.55 ACRES OF LAND, MORE OR LESS,
SITUATE IN CLARK COUNTY, STATE OF
WASHINGTON, AND DANIEL W.
KELLER, JAMES F. KELLER AND
LEONARD L. CEBULA, TRUSTEES OF
THE FRANCES M. KELLER TRUST; et al.,**

Defendants.

Case No. 3:09-CV-05660-RBL

STIPULATED JUDGMENT
DETERMINING JUST
COMPENSATION

Noted on Motion Calendar:
December 9, 2009

Plaintiff, United States of America, and the Defendants, Daniel W. Keller, James F. Keller and Leonard L. Cebula, Trustees of the Frances M. Keller Trust; Birtcher Business Center Vancouver, LLC; and First Independent Bank (collectively, the “Stipulation Defendants”), having either an ownership or other interest in the subject property, having agreed upon the amount of just compensation for the taking in this condemnation action, and the Court being fully advised in the premises,

Finds that these proceedings have been conducted according to law, and this Court has jurisdiction over the parties and the subject matter.

1 THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT:

2 1. On October 21, 2009, Plaintiff, United States of America, filed a Complaint for
3 Condemnation. On the same date the Plaintiff filed a Declaration of Taking to acquire the fee
4 interest in the subject property as described and stated in Schedules B and C of said Declaration
5 of Taking. As of October 21, 2009, title to the subject property became vested in the United
6 States of America.

7 2. In accordance with an Option Agreement dated July 29, 2009, between the Plaintiff
8 and the Defendant, Frances M. Keller Trust, who was at the time the fee owner of the subject
9 property, the Plaintiff has deposited the sum of Five Million Six Hundred Thirty-One Thousand
10 Two Hundred Seventy-One Dollars (\$5,631,271.00) representing the amount due under the
11 Option Agreement for the purchase of the subject property, less the amount of Two Hundred
12 Thousand Dollars (\$200,000.00) having previously been paid to said Defendant as required by
13 the Option Agreement.

14 3. All Stipulation Defendants hereby concur that the amount of Five Million Eight
15 Hundred Thirty-One Thousand Two Hundred Seventy-One Dollars (\$5,831,271.00) as stated in
16 the Option Agreement represents full and fair just compensation for the subject property taken by
17 the United States of America from the Stipulation Defendants and said amount shall be full and
18 complete satisfaction of any and all claims whatsoever by the Stipulation Defendants against the
19 United States of America by reason of the institution of this action and the taking of the subject
20 property.

21 4. The sums now on deposit with the Court should be disbursed to the Defendants
22 named in this Stipulated Judgment and allocated as follows:

23 a. Daniel W. Keller, James, F. Keller and Leonard L. Cebula, Trustees of the
24 Frances M. Keller Trust, the sum of \$2,126,397.39;

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1 b. Birtcher Business Center Vancouver, LLC, the sum of \$814,344.00;

2 c. First Independent Bank, the sum of \$2,648,529.61.

3 5. The sum of \$42,000.00 shall remain on deposit with the Court, pending further
4 stipulation or order of this Court.

5 6. Each Stipulation Defendant warrants it has the exclusive right to the compensation
6 herein and that no other party is entitled to the same or any part thereof by reason of any
7 unrecorded agreement.

8 7. All remaining entities with a purported interest in the subject property who have
9 been given notice of the condemnation – Eastgate Plaza, LLC, Wal-Mart Stores, Inc., and Sun
10 Country Homes, Inc. -- have been served with notice of the application for disbursement of funds
11 as stated in this Stipulation.

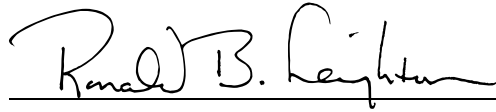
12 8. The City of Vancouver, also named in Schedule E of the Declaration of Taking as
13 having a possible interest in the subject property, having conveyed all interest in the same to the
14 United States of America by Quit Claim Deed recorded on October 21, 2009 under Clark County
15 Auditor's File 4612571D, is not a party to this action.

16 9. Judgment is hereby entered in accordance with this Stipulation. This judgment does
17 not determine whether any entity other than the Stipulation Defendants is entitled to any
18 compensation.

19 10. The Clerk of the Court shall promptly distribute the funds on deposit in accordance
20 with paragraph 4 above to Daniel W. Keller, James F. Keller and Leonard L. Cebula, Trustees of
21 the Frances M. Keller Trust, Keller & Keller, P.C., PO Box 14746, Portland, OR 97293-0746,
22 the sum of \$2,126,397.39; Birtcher Business Center Vancouver, LLC, the sum of \$814,344.00
23 payable as follows: Birtcher Business Center Vancouver, LLC, 5335 SW Meadows Rd, #430,
24 Lake Oswego, Oregon 97035, the sum of \$764,344.00 and to Jordan Schrader Ramis PC, Two
25 Centerpointe Drive, 6th Floor, Lake Oswego, Oregon 97035, the sum of \$50,000.00; First

1 Independent Bank, 1220 Main Street, Suite 1, Vancouver, Washington 98660, attention: Greg
2 Froman, the sum of \$2,648,529.61.

3 IT IS SO ORDERED THIS 10th DAY OF December, 2009.

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6 RONALD B. LEIGHTON
7 UNITED STATES DISTRICT JUDGE

8 **Jenny A. Durkan, United States Attorney**

9 By: /s/ Phillip H. Lynch
10 Phillip H. Lynch, Assistant U.S. Attorney

Date: December 8, 2009

11
12 **The Frances M. Keller Trust**

13 By: /s/ William M. Keller
14 William M. Keller, Attorney for
15 The Frances M. Keller Trust

Date: December 4, 2009

16 **Birtcher Business Center Vancouver, LLC**

17 By: /s/ Harlan Jones
18 Harlan Jones, Attorney for Birtcher Center
19 Vancouver, LLC

Date: December 3, 2009

20 **First Independent Bank**

21
22 By: /s/ David E. Gregerson
23 David E. Gregerson, Attorney for First
24 Independent Bank

Date: December 5, 2009